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Newton, MA 02167  
February 26, 1995

Secretary of the Commission  
Rule making #8577  
Federal Communications Commission  
1919 M Street  
Washington, DC. 20554

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Dear sir or madam,

The purpose of this letter is to **PROTEST** the petition for rule making (#8577), labeled "Request Amendment of the Commissions Rules to Preempt State and Local Regulation of Tower Siting for Commercial Mobile Service Providers, dated December 22, 1994, and tendered by the Cellular Telecommunications Industry Association, a consortium of sellers of mobile communication service and equipment. We understand from our congressman, whose office inquired at our request, that the period for public comment on this petition has been extended until March 6, 1995 and hence appreciate your including our comments as part of your review of this petition.

We are writing on behalf of our neighborhood association to voice our strong **OPPOSITION** to this petition which would enable state and local ordinances to be preempted for the siting of microwave towers. The argument in this petition, which was advanced by a groups of business interests who will stand to profit financially from its adoption, while couched in complicated legal terminology is based on a series of premises, all of which are flawed.

Stripped to its essentials, the argument proposed in this lengthy petition seems to proceed as follows:

- 1) The "public good" demands expansion of cellular phone service.
- 2) Said expansion requires overriding local zoning ordinances.
- 3) Congress intended to achieve this override, even though it did not say so in ~332 of the Communications Act, and, in fact, said the opposite.
- 4) The FCC has the authority to "correct" this congressional oversight.
- 5) The FCC must exercise this authority.

In the numbered paragraphs that follow, we address each of these points systematically and in order:

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1) Does the "public good" demand an expansion of mobile phone services?

It is difficult to argue that, in areas well served by wired lines and in which fire, ambulance, police and other emergency communications systems already exist (as is true throughout most, if not all, populated areas in the US), cellular services are anything more than a convenience and a luxury. The information highway is readily accessible now, by wire.

2) Does expansion of cellular phone services require overriding local zoning ordinances?

Cellular services are expanding dramatically already in spite of the fact that vendors must conform to local zoning regulations. The recent licensing of expanded frequency ranges by the FCC will further expand the capacity of current installations dramatically.

3) Did Congress intend to achieve such an override?

In developing regulations to implement Congressional Acts and other laws, the wording of the statute is interpreted in the simplest and most straightforward manner. Hence, in developing related regulations, the FCC should presume that Congress meant what it said in ~332 of the Communications Act, namely that states can not show favoritism to one vendor over another, or exclude vendors who wish to compete in the cellular market. However, within this same item of legislation, Congress reserved to the states a broad discretion over essentially all other "terms and conditions". Thus Congress not only did not address preemption of local and state zoning ordinances in the specific siting of microwave towers, but also specifically reserved for states and local authorities discretion in this and other "terms and conditions".

4) Does the FCC have authority to "correct" this Congressional oversight?

As noted above, the wording of ~332 of the Communications Act seems fairly clear, and does NOT include Congressional intent to override local zoning. Presumably this clear expression of Congressional intent limits FCC authority in this respect.

Moreover, we understand that, other than assigning spectral transmission space, the FCC's regulatory authority and charge is limited to interstate communications. This, by definition should exclude cellular telephone communications, since every cellular call is a strictly "local" call to a neighboring tower. At that point the call is switched into the already existing network that currently provides for all interstate calls. Thus the mobile link (a distance of a few miles at most) is confined to a single state. (This is not unlike the link from portable phone to its base station.) Hence we question whether this falls within the FCC's charge.

5) Even if the FCC has the authority in question, must it exercise it?

Even if, in a particular situation, the FCC has the authority to protect commercial interests from having to deal with concerned citizens, should they do so? The petition submitted by the industry group says you should and must. We strenuously question this premise as well.

This petition represents an all too familiar request by private industry to increase Federal regulation to further their own business interests. Historically a limited array of essential service entities have been protected by increased Federal regulation. The public, in turn, has benefited from comprehensive governmental oversight including control of rate setting and income/profit streams. With this petition, the CTIA (which parenthetically does not represent an essential service entity) is requesting the benefits of increased Federal regulation to subsidize its industry's growth and profit margin, with no benefit to the public.

We have no interest in halting progress. However, we do believe that forcing state and local authorities to allow microwave towers to be erected at whatever site or sites most pleases the cellular communications company or competing companies is an inappropriately coercive, and unnecessary, way of building for the future. We, for example, know of no responsible efforts by the cellular telecommunications industry to encourage vendors to share existing towers, or to locate towers in industrial zones away from residential neighborhoods.

We know from our own experience that there are many other neighborhood groups (we have been in touch with at least 50) concerned with the encroachment of towers on their neighborhoods. You may not hear from them since most do not yet know that this effort to subvert local prerogatives is going on. We will however do our best to spread the word.

Thank you for your attention to this document, and for considering our comments in your deliberations.

Sincerely,

Sheldon Benjamin  
William L. Black  
Carole Black  
Frank Crocetti  
Edward Mullen  
Miriam Rosenblum